United Nations A/71/142

General Assembly

Distr.: General
14 July 2016

Original: English

Seventy-first session

Request for the inclusion of an item in the provisional agenda of the seventy-first session

Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965

Letter dated 14 July 2016 from the Permanent Representative of Mauritius to the United Nations addressed to the Secretary-General

I have the honour to request, in accordance with rule 13 of the rules of procedure of the General Assembly, the inclusion in the provisional agenda of the seventy-first session of the Assembly under heading F, Promotion of justice and international law, of an item entitled "Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965". I further request that this item be considered directly in a plenary meeting.

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum is attached to the present letter (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly.

(*Signed*) Jagdish D. **Koonjul**
Permanent Representative of Mauritius to the United Nations

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Annex

Explanatory memorandum

1. Mauritius seeks the inclusion of an item entitled "Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965".

Background

2. The Chagos Archipelago is a group of islands in the Indian Ocean that has been part of Mauritius since at least the eighteenth century, at a time when Mauritius was under French colonial rule. All of the islands forming part of the French colonial territory of Île de France (as Mauritius was then known) were ceded to Britain in 1810, after which Mauritius, including the Chagos Archipelago, was under British colonial rule.

3. In 1965, in the lead-up to Mauritian independence, the United Kingdom unlawfully dismembered Mauritius by purporting to excise the Chagos Archipelago and create a so-called "British Indian Ocean Territory". The Republic of Mauritius, in its reduced size, then achieved independence in 1968. Thereafter, all Mauritians residing in the Chagos Archipelago were forcibly evicted from the Archipelago by the British authorities, in disregard of fundamental human rights.

4. The General Assembly has a direct institutional interest in this matter. It has played a historic and central role in addressing decolonization, especially through the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations. Under its 1960 resolution 1514 (XV) on the granting of independence to colonial countries and peoples, the General Assembly declared that a denial of fundamental human rights is contrary to the Charter; that the integrity of the national territory of dependent peoples shall be respected; and that any attempt at the disruption of the territorial integrity of a colonial country is incompatible with the purposes and principles of the Charter.[1] In its 1965 resolution 2066 (XX), a resolution dealing specifically with Mauritius, the General Assembly drew attention to the duty of the administering Power to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV) and invited "the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity".[2] Further relevant resolutions were adopted in 1966 and 1967.[3]

5. Dismemberment occurred. Subsequent efforts to return the Chagos Archipelago to the control of Mauritius to complete the process of decolonization of Mauritius and to allow the resettlement of those evicted, have been unsuccessful. The United Kingdom maintains that it exercises sovereignty lawfully over the Chagos Archipelago and denies the right of return, yet it also tacitly admits the impropriety of its actions, stating that it will return the Chagos Archipelago to Mauritius once it is no longer required for defence purposes. An arbitral tribunal acting under Part XV of the United Nations Convention on the Law of the Sea recently unanimously found that this commitment to return the Chagos Archipelago

[1] Resolution 1514 (XV) of 14 December 1960, paras. 1, 4 and 6.
[2] Resolution 2066 (XX) of 16 December 1965, paras. 3 & 4.
[3] Resolutions 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.

to Mauritius is binding under international law,[4] acknowledging that Mauritius has real and firm legal rights with respect to the Chagos Archipelago. Two members of the Tribunal found, inter alia, that the excision of the Chagos Archipelago from Mauritius in 1965 showed "a complete disregard for the territorial integrity of Mauritius by the United Kingdom",[5] in violation of the right to self-determination.

The benefit of an advisory opinion

6. In 2010, on the fiftieth anniversary of the adoption of resolution 1514 (XV), the General Assembly noted with deep concern that fifty years after the adoption of the Declaration, colonialism had not yet been totally eradicated. It further declared "that the continuation of colonialism in all its forms and manifestations is incompatible with the Charter of the United Nations, the Declaration and the principles of international law", and considered "it incumbent upon the United Nations to continue to play an active role in the process of decolonization and to intensify its efforts for the widest possible dissemination of information on decolonization, with a view to the further mobilization of international public opinion in support of complete decolonization".[6]

7. In furtherance of its active role in the process of decolonization, the General Assembly has a continuing responsibility to complete the process of the decolonization of Mauritius. The best means is for the General Assembly to engage with relevant States directly concerned with the Chagos Archipelago, through consultations, negotiations and other measures, all towards a peaceful and orderly resolution of this matter. To fulfil that function, the General Assembly would benefit from an advisory opinion of the International Court of Justice on the legal consequences of the purported excision of the Chagos Archipelago from Mauritius in 1965 during the period of decolonization.

8. Members of the United Nations would also benefit from the guidance of the principal judicial organ of the United Nations. And by having recourse to the International Court of Justice the General Assembly would also underscore its resolve to give effect to the mission entrusted to it by the Members of the United Nations, namely to complete the process of decolonization.

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[4] In the Matter of the Chagos Marine Protected Area (Mauritius v. United Kingdom), Award of an Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (18 March 2015), para. 448.

[5] Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Dissenting and Concurring Opinion of Judges Kateka and Wolfrum, para. 91. The other three members of the Tribunal considered that the Tribunal lacked jurisdiction over the issue, and therefore expressed no view on that part of the case.

[6] General Assembly resolution 65/118 of 10 December 2010, paras. 2 and 9.